

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4587 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AN GULIWALA

Versus

STATE OF GUJARAT

Appearance:

PARTY-IN-PERSON for Petitioner

Ms.Harsa Devani, A.G.P. for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/09/1999

ORAL JUDGEMENT

1. This petition was filed by the petitioner in person and he also appeared to argue on interim relief. Interim relief was finally granted on 2.12.1997. It is further revealed from the record that on various dates the petitioner - party in person never remained present before this Court. Today also in the second round he is not present. Learned A.G.P. has been heard and the

petition has been examined. No Counter Affidavit has been filed by the respondents.

2. Brief facts giving rise to this petition are that the grand father of the petitioner occupied the land and construction over Survey Nos.90, 90/3, 90/4, 90/1/1/1, 90/1/1, 13, final plot No.124 having factory thereon. The factory was constructed according to the bye-laws of Ahmedabad Municipal Corporation. The plan was approved by the Ahmedabad Municipal Corporation on 24.1.1967. It was also approved by the District Collector, Ahmedabad on 1.12.1980. The Competent Authority under the Urban Land Ceiling Act gave permission to Shri A.S.Guliwala u/s.27 of the ULC Act for sale of property under order dated 5.12.1980. Thereafter it appears that vide order dated 24.3.1994 the respondent No.2 cancelled the permission granted by the Competent Authority u/s.34 of the Act after lapse of 14 years. According to the petitioner this was an action with ulterior and malafide motive. Allegation of corruption was also made in the writ petition regarding cancellation of permission granted by the Competent Authority. No action was taken on the complaint made by the petitioner to the higher Authority of the Revenue Department, hence this petition was filed.

3. The prayer of the petition is not happily worded inasmuch as it seems to have been filed by the petitioner in person. The first relief is for setting aside the order of the respondent. The date of the order is not mentioned in the relief clause. However, it appears that the petitioner meant that the order Annexure : A dated 24.3.1994 of the Joint Secretary, Revenue Department be quashed. The second relief is to hold the respondents guilty for mis-using their power and authority and to punish them. The third relief is to grant interim relief for staying any adverse action being taken by the respondents against the petitioner.

4. So far as the third relief is concerned it was granted by this Court on 2.12.1997. Obviously this interim relief is to continue till the petition is finally disposed of. Since the petition is being finally disposed of today the fate of interim relief will depend upon the fate of this petition. So far as the second relief is concerned it cannot be granted because no evidence regarding corruption on the part of the respondents has been adduced prima facie by the petitioner. On such vague allegation no action in exercise of jurisdiction under Article 226 of the Constitution of India can be taken.

5. So far as first prayer is concerned it is confined to setting aside the order dated 24.3.1994, Annexure : A. This order seems to have been passed by the Joint Secretary u/s.34 of the Urban Land (Ceiling & Regulation) Act (for short "the Act") whereby the order of the Competent Authority granting permission to sell the property was set aside and the matter has been remanded for reconsideration in the light of observations made in the Judgment. Prima facie no illegality is found in the impugned order. Certain observations were made by the Joint Secretary in the impugned order and in the light of those observations the Competent Authority was to reconsider its earlier order granting permission to sell. No doubt this action was taken after a lapse of 14 years, but the action cannot be said to be prima facie malafide nor it can be said to be time barred. Consequently no occasion arises for interfering with the impugned order.

6. It may also be mentioned that the impugned order was passed on 24.3.1994. The repealing Act came into force on 30.3.1999. After remand the matter must have been pending before the Competent Authority and it is left open to the decision of the Competent Authority to decide whether after enforcement of the repealing Act the matter can be continued further in view of direction of the Joint Secretary in the impugned order dated 24.3.1994.

7. Some observation has been made by this Court in the interim order based upon pronouncement of the Apex Court in Bhim Singhji v/s. Union of India, reported in A.I.R. 1981 SC 234. It was observed by this Court that the Apex Court in this case has struck down section 27(1) of the Urban Land (Ceiling & Regulation) Act, 1976 and in this view of the matter no order u/s.34 of the Act could have been passed by the State Government setting aside the order which was passed by the Competent Authority in favour of the petitioner u/s.27 of the Act. It may be mentioned that this observation in the interim order is hardly binding upon this Court while deciding the petition finally. It may further be observed that the entire Section 27 was not struck down nor the entire Act by the Apex Court in Bhim Singhji case (Supra). The Apex Court by its majority judgment observed that the entire Urban Land (Ceiling & Regulation) Act of 1976 is valid save and except Section 27(1) insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or of a portion of such building which is within the ceiling area. Thus, prima facie this judgment does not strike down the entire Section 27(1) of the Act.

It simply observed that only that portion of Section is invalid which imposes restriction on transfer of any urban or urbanisable of land falling within the ceiling area. For this reason also it is difficult to hold that the impugned order is invalid.

8. For the reasons stated above there is no merit in this petition which is hereby dismissed. No order as to costs.

sd/-

Date : September 06, 1999 (D. C. Srivastava, J.)

sas